IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. No.14401 of 2017 & W.M.P. Nos.15615 & 15616 of 2017

M. Ramasamy ... Petitioner

vs.

1 Indian Overseas Bank
represented by its Chief Executive Officer/MD (In charge)
Central Office
763 Anna Salai
Chennai 600 002

2 The Chief Manager/Disciplinary Authority
Indian Overseas Bank
Central Office
HRMD (Industrial Relations Department)
763 Anna Salai
Chennai 600 002 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the impugned letter bearing DO:DA:CM (SR)/Vig/2017-18 dated 03.06.2017 issued by the second respondent and to quash the same and consequently, direct the respondents to provide legal assistance to the petitioner in the departmental enquiry held against him pursuant to charge sheet dated 15.05.2017.

For petitioner Mr. K.M. Ramesh
For respondents Mr. K. Srinivasamurthy

ORDER

This writ petition has been preferred calling in question, the legality and validity of the letter dated 03.06.2017 issued by the second respondent, in and by which, the petitioner's request to have a lawyer engaged to defend his case in the domestic enquiry, has been turned down and for a direction to the respondents to provide legal assistance to the petitioner in the departmental enquiry held against him pursuant to charge sheet dated 15.05.2017.

2 The petitioner is presently working as Special Assistant in the Regional Office of the respondent bank at Vellore. After placing him under suspension vide order dated 14.08.2015, the second respondent has revoked the same vide order dated 07.01.2017. However, based on the registration of an FIR against the petitioner by the Central Bureau of Investigation in the year 2015, the second respondent has issued a charge memo to the petitioner on 15.05.2017 repeating similar allegations contained in the FIR registered by the Central Bureau of Investigation. Albeit the petitioner denied the charges levelled against him, the second respondent, having been not convinced with the explanation offered by the petitioner, appointed an Enquiry Officer, who, on his appointment, issued a notice of enquiry fixing the date of enquiry as 06.06.2017.

3 In the aforementioned background, the petitioner's grievance is that when he requested for the copies of documents proposed to be relied upon by the respondent bank in the enquiry, they were supplied to him only on 05.06.2017; subsequently, taking note of the complicated charges levelled against him, he sought permission of the respondent bank to engage a lawyer to defend his case as per the provisions of the Bipartite Settlement, which enables the petitioner to have the benefit of a lawyer; but, the second respondent, vide order dated 03.06.2017, has rejected his request on the ground that the enquiry proceedings does not involve any legal issues; therefore, the petitioner has preferred the instant writ petition challenging the said order dated 03.06.2017 negating his request to engage a lawyer to defend his case in the domestic enquiry.

4 Referring to Clause 12(a)(iii) of the Bipartite Settlement pertaining to defence assistant in the departmental enquiry, which reads as under:

> **"12. The procedure in such cases shall be as follows:**
>
> a An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed or enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence.

> He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended:
>
> (i) ....
>
> (ii) ....
>
> (iii) with the bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.” (emphasis supplied)

the learned counsel for the petitioner submitted that when there is a specific clause in the Bipartite Settlement giving adequate protection to the delinquent officer to have the benefit of a lawyer to defend his case with the permission of the bank, the respondent bank shall grant permission to the petitioner to engage a lawyer to defend his case; in the present case, the petitioner, vide letter dated 05.06.2017, requested the All India Overseas Bank Employees' Union (for brevity “AIOBEU”) to provide a defence representative to defend his case, but, by letter of even date, the General Secretary of AIOBEU refused to provide any representative, much less any effective representative, to defend his case on the ground that most of the Central Unit office bearers had retired from service and that all the available office bearers are preoccupied in connection with the 35th General Council to be held during July 2017; therefore, the petitioner is unable to participate in the enquiry proceedings with the assistance of the defence representative from AIOBEU; however, as there is a specific provision under Clause 12(a)(iii) of the Bipartite Settlement which entitles a delinquent officer to have the assistance of a lawyer, the respondent bank cannot go back from the terms of the said provision contained in the Bipartite Settlement.

5 The learned counsel for the petitioner further submitted that since the petitioner was unable to participate in the enquiry proceedings, the Enquiry Officer has proceeded by examining 8 witnesses and the petitioner was not even given permission to object to marking of some of the documents through the said witnesses. Further, according to the learned counsel, in the midst of the enquiry proceedings, adding insult to injury, the petitioner has been issued with an additional charge sheet on 08.06.2017 containing 13 new allegations; therefore, when the respondent bank is bound to complete the enquiry, considering the additional charge sheet dated 08.06.2017, no prejudice will be caused to the respondent bank, if a direction is given to the respondent bank to conduct the enquiry afresh by providing assistance of a lawyer to the petitioner to defend his case before the Enquiry Officer.

6 A detailed counter affidavit has been filed by the respondent bank.

7 The learned counsel for the respondent would submit that albeit Clause 12(a)(iii) of the Bipartite Settlement contains a specific provision qua grant of permission by the bank for engagement of a lawyer by the delinquent officer, the delinquent officer has no absolute right or carte blanche to have a lawyer to defend his case, for, it always depends upon the discretion of the Enquiry Officer; in the present case, as the enquiry proceedings does not involve legal issues, much less complicated legal issues warranting a lawyer's assistance, the Enquiry Officer has rightly rejected the petitioner's request; therefore, the need for the petitioner to engage a lawyer in the domestic enquiry does not arise at all; moreover, when the charges slapped on the petitioner are not complicated in nature, he can always avail the services of any one of the office bearers from AIOBEU when they are easily available and the letter dated 05.06.2017 said to have been issued by AIOBEU refusing to provide a union representative, is nothing but a concocted one obtained from AIOBEU only for the purpose of supporting the prayer in the present writ petition and hence, the rejection letter dated 05.06.2017 said to have been issued by AIOBEU, cannot be relied upon; further, when there are two more unions in the respondent bank other than AIOBEU, the petitioner has addressed

a letter dated 02.06.2017 seeking a lawyer's assistance only to AIOBEU just to protract the disciplinary proceedings pending against him; therefore, the petitioner's claim not being a *bona fide* one, is liable to be rejected; furthermore, the petitioner has not made any attempt to get union representative from the other two unions and hence, he may be advised to get the assistance of a representative from other two unions and if, for any reason, the petitioner's prayer is allowed, that would definitely cause more prejudice not only to the petitioner but also to the respondent bank, as the petitioner is due to reach the age of superannuation on 30.06.2017. It is also submitted that when there is no specific provision qua the petitioner's retention in service for the purpose of continuing the present enquiry, at this stage, interfering with the enquiry, may create more problem to both sides and therefore, this writ petition is liable to be dismissed.

8 Heard the learned counsel for the petitioner and the learned counsel for the respondent bank and perused the records.

9 Incontrovertibly, the petitioner has been issued with two charge memos. The first charge memo issued on 15.05.2017 contains five allegations and the additional charge memo dated 08.06.2017, which was issued in the midst of the enquiry. contains 13 new allegations.

10 Soon after receipt of the first charge memo dated 15.05.2017, the petitioner submitted his explanation seeking certain documents proposed to be relied upon in the enquiry by the prosecution. However, the said documents were supplied to him only on 05.06.2017. After receipt of the said documents, he thought it fit to engage his union representative to defend his case before the Enquiry Officer. However, when he approached his own union, *viz*., AIOBEU, seeking their support by letter dated 05.06.2017, the General Secretary of AIOBEU turned down his request vide order of even date on the ground that most of the Central Union office bearers had retired and all the available office bearers are preoccupied in connection with the 35th General Council to be held during July 2015. Therefore, the petitioner, being handicapped to defend his case, taking umbrage under Clause 12(a)(iii) of the Bipartite Settlement, addressed a representation to the respondent bank seeking permission to engage a lawyer to defend his case, which has been negated by the order impugned herein.

11 When Clause 12(a)(iii) of the Bipartite Settlement, as has been extracted above, states in unambiguous and unequivocal terms that the bank can grant permission to a delinquent officer to engage a lawyer, the ground for

rejection of the petitioner's request that there is no element of legal issue involved in the enquiry proceedings, does not impress upon this Court for two reasons. Firstly, a careful perusal of both the charge memos mentioned supra clearly shows that a great extent of complexity is involved in the matter. Secondly, Clause 12(a)(iii) of the Bipartite Settlement also permits the respondent bank to provide a defence assistant to the delinquent officer to defend his case. Thus, in view of special circumstance mentioned hereinabove, *i.e.,* when AIOBEU itself has refused to spare a suitable representative to the petitioner to defend his case, this Court finds no impediment in directing the respondent bank to comply with the provisions of Clause 12(a)(iii) of the Bipartite Settlement qua providing a defence assistant to the petitioner in the departmental enquiry.

12 In this regard, it is apposite to refer to a decision dated 06.06.2016 of this Court in **S.Viswanathan vs. State Bank of India and another**[1] involving identical set of facts, wherein, it has been held as under:

> "17. This Court could see substance in the case of the petitioner, for, it is the duty of the Court to keep the balance to avoid the perpetuation of an imbalance in the conduct of disciplinary proceedings, because, by any act of the employer, the employee should not be put to disadvantage in the conduct of disciplinary proceedings, otherwise, this would amount to denial of reasonable opportunity. Therefore, this Court is of the

1 W.P. No.8407 of 2015

view, the Disciplinary Authority ought to have allowed the claim of the petitioner to engage a lawyer to represent his claim in a domestic enquiry, by taking note of the fact that he had already filed a civil suit as stated above against the Union and as such, he would not be in a position to get the assistance of a representative of the union.

18. Further, it is pertinent to refer to the observation of Lord Denning M.R. In C.A. PETT v. GREYHOUND RACING ASSOCIATION LTD. [1968 (2) ER 545] that once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself of his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be toungue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. If justice is to be done, he ought to have the help of someone to speak for him; and who better than a lawyer who has been trained for the task. I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth, but he has also a right to speak by counsel.

19. Thus, in view of the above said observations and settled legal proposition, I am of the considered view that the Enquiry Officer as well as the Disciplinary Authority failed to exercise their discretionary power properly. Therefore, this Court, by setting aside the impugned order dated 12.03.2015, directs the first respondent to permit the petitioner to engage a lawyer to represent his claim in the domestic enquiry.

20. In fine, the writ petition stands allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed."

13 Further, the petitioner has been issued with an additional charge memo dated 08.06.2017 in the midst of enquiry. In any event, since the petitioner is facing enquiry with regard to the above charges and since the petitioner is due to reach the age of superannuation on 30.06.2017, the

respondent bank is directed to proceed with the enquiry afresh by providing assistance of a lawyer to the petitioner, subject to the filing of an undertaking by the petitioner before the Disciplinary Authority, within three days from tomorrow (22.06.2017) to the effect that he will not raise a plea that he ceases to be an employee of the bank. It is further directed that the enquiry shall be completed by the Enquiry Officer within a period of two months and the Disciplinary Authority shall pass orders within a period of one month from the date of receipt of the report of the Enquiry Officer. Needless to mention that the petitioner shall extend his utmost cooperation in the conduct of the enquiry. It is made clear that, in the event, the petitioner fails to file an undertaking, as aforesaid, within three days from tomorrow (22.06.2017), the respondent bank is at liberty to proceed with the enquiry from the stage where the enquriy was stopped.

With the above directions and observation, this writ petition stands disposed of. Connected W.M.Ps. are closed.

21.06.2017

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Note to Office: Issue order copy by 22.06.2017

T. RAJA, J.

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To

1 The Chief Executive Officer/MD (In charge)
Indian Overseas Bank
Central Office
763 Anna Salai
Chennai 600 002

2 The Chief Manager/Disciplinary Authority
Indian Overseas Bank
Central Office
HRMD (Industrial Relations Department)
763 Anna Salai
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